

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

FIBER TECHNOLOGIES NETWORKS, L.L.C.
140 Allens Creek Road
Rochester, NY 14618

Complainant,

v.

TOWN OF SHREWSBURY ELECTRIC
LIGHT PLANT
100 Maple Avenue
Shrewsbury, MA 01545-5398

Respondents.

D.T.E. 01-70

**OPPOSITION OF FIBER TECHNOLOGIES NETWORKS, L.L.C.
TO THIRD MOTION OF SHREWSBURY'S ELECTRIC LIGHT PLANT
TO COMPEL RESPONSES TO INFORMATION REQUESTS**

The Third Motion of Shrewsbury's Electric Light Plant to Compel Responses to SELP 2-8, SELP 2-9, SELP 2-10, and SELP 2-11 raises identical issues to those in both SELP's first and second motion to compel. The documents it seeks are the same customer leases and other customer records at issue in the first motion, and Fibertech incorporates by reference its arguments in response to both the first and second motions.¹

SELP has continually failed to identify what disputed issue in this case causes Fibertech's customer agreements to be relevant or how the particular information sought in the disputed request makes proof of any material fact more or less likely. With respect to SELP 2-7, 2-8, 2-9, and 2-10, the mere mention of Fibertech's customers and customer agreements does not put into

¹ See *Opposition of Fiber Technologies Networks, L.L.C. to Motion of Shrewsbury's Electric Light Plant to Compel Responses to Information Requests* (filed Nov. 28, 2001); See *(Second) Opposition of Fiber Technologies Networks, L.L.C. to (Second) Motion of Shrewsbury's Electric Light Plant to Compel Responses to Information Requests* (filed Nov. 29, 2001).

issue the details or terms of such agreements, the specific locations outside Massachusetts where such customers do business, the customers' construction timetables, and other such matters that SELP seeks.

With respect to SELP 3-14, the same arguments apply. In addition, the terms on which Fibertech is doing business outside of Massachusetts do not establish whether it is meeting the requirements of G.L.c 166, § 25A as contended. Moreover, even if these were relevant to Massachusetts, the Department has recognized that past private carrier contracts are not an obstacle to common carrier status, as the Appeals Court recently reaffirmed. *Yankee Microwave, Inc. v. Petricca Communications Systems, Inc.*, Docket No. 98-P-559, slip op. at p. 7 (Mass. App. Ct., Jan. 7, 2002) (citing MFS-McCourt, D.P.U. 88-229/252, p. 10 (1989)).

With respect to SELP 3-11, SELP's response to Fibertech's 1-20 is a perfectly appropriate response. What goes around comes around. Sauce for the goose is sauce for the gander. Turnabout is fair play. Fibertech cited the Global NAPs dark fiber decisions in its Complaint; SELP responded, "SELP avers that the Global NAPs cases regarding "dark fiber" and Section 271 of the Telecommunications Act of 1996 are irrelevant to the instant matter." In Fibertech 1-20, Fibertech specifically asks SELP to explain why the Global NAPs case is irrelevant to this case. SELP simply objected to this request on the grounds that it called for a legal conclusion, without responding. Therefore, when SELP asked Fibertech why the Global NAPs case is relevant, Fibertech simply referred to SELP's response, without endorsing its objection. This response is completely fair and logical. SELP cannot obtain discovery it is not willing to provide itself.²

² Although Fibertech has already addressed the relevance of the Global NAPs case at some length in its Complaint and the Direct Testimony of Scott Lundquist, it is prepared to respond to SELP 3-11, if SELP responds to Fibertech 1-20.

CONCLUSION

For all of the reasons set forth above, Fibertech requests that the Department deny SELP's third request to compel Fibertech to respond completely to the above-listed information requests. In the alternative, if Fibertech is compelled to respond to such information requests, Fibertech seeks a non-disclosure agreement from SELP and protective treatment from the Department pursuant to Motion of Fiber Technologies L.L.C. for Protective Treatment of Confidential Information, dated November 29, 2001.

Respectfully submitted,

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